SUBJECT INDEX.

	Page
Opinions Below	2
Jurisdiction	2
Statute Involved	2
Questions Presented	3
Statement of the Case	4
Specification of Errors to be Urged	10
Reasons for Granting the Writ	10
Conclusion	22
Appendix (Text of Statute Involved)	23
" (Provisions of the Contract)	25

TABLE OF AUTHORITIES CITED

Cases:	Page
Algoma Plywood and Veneer Co. v. Wisconsin Employment Relations Board, 336 U. S. 301	13
Allen-Bradley Local v. Wisconsin Employment Relations Board, 315 U. S. 740	13
Amalgamated Association v. Wisconsin Employment Relations Board, 340 U. S. 383	14, 17
American Federation of Labor v. Swing, 312 U. S. 321	13
Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U. S. 667	13
Bindczyck v. Finucane, — U. S. —, 20 Law Week 4019	14
Boeing Airplane Company v. Aeronautical Industrial Lodge No. 751, 188 F. 2d 356	11, 19, 20
Boeing Airplane Co. v. National Labor Relations Board, 174 F. 2d 988	11, 18
Colgate-Palmolive-Peet Co. v. National Labor Relations Board, 338 U. S. 355	15, 16
Hill v. Florida, 325 U. S. 538	13, 17
International Union v. Colonial Hardwood Flooring Co., 168 F. 2d 33	11, 21
International Union U. A. W. v. Wisconsin Employment Relations Board, 336 U. S. 245	12, 13
International Union v. O'Brien, 339 U. S. 454	11, 13
LaCrosse Tel. Corp. v. Wisconsin Employment Relations Board, 336 U. S. 18	13
National Labor Relations Board v. Jones & Laughlin Steel Corporation, 301 U. S. 1	12
National Labor Relations Board v. Kalamazoo Stationery Company, 160 F. 2d 465, certiorari denied 332 U. S. 762	13
Plankinton Packing Co. v. Wisconsin Employment Relations Board, 338 U. S. 953	13
Shirley-Herman Co. v. International Hod Carriers, 182 F. 2d 806	11, 21

TABLE OF AUTHORITIES CITED (Continued).

Statutes:	Page
Employers Liability Act, 45 U. S. C. §§ 51 et seq.	17
Labor-Management Relations Act of 1947 (Taft-Hartley Act), 61 Stat. 136, 29 U. S. C. (Supp. III) §§ 151, et seq. 2, 3, 4, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25	
28 U. S. C. § 1254(1)	2

Miscellaneous:	Page
5 C. C. H. Labor Law Reporter:	
§ 51,827	15
§ 53,101.75	16
§ 53,110.80	16
§ 53,120.39	16
§ 53,140.110	16
§ 53,150.46	16
§ 53,170.149	16
§ 53,180.62	16
Collective Bargaining Negotiations and Contracts (Bureau of National Affairs):	
36:1	15
23:1-24:706	16
Union Contracts and Collective Bargaining Practice (Prentice-Hall):	
§ 56,043.35	16
§ 56,051.44-46	16
§ 56,071.46	16
§ 56,161.44	16
§ 56,212.44	16
§ 56,228.4	16
§ 56,754.93	16
§ 56,908.8	16
§ 56,945.67	16
§ 56,965.71	16

IN THE

Supreme Court of the United States.

October Term, 1951.

No.

PATERSON PARCHMENT COMPANY, A CORPORATION,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF PAPER MAKERS, AND INTERNATIONAL BROTHERHOOD OF PAPER MAKERS, BRISTOL LOCAL NO. 500, UNINCORPORATED ASSOCIATIONS,
Respondents.

PETITION FOR WRIT OF CERTIORARI

to the United States Court of Appeals for the Third Circuit.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, Paterson Parchment Paper Company, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above entitled cause on August 1, 1951, affirming the judgment of the United States District Court for the Eastern District of Pennsylvania.

Opinions Below.

The ruling of the District Court (R-164) [1] granting respondent's motion for a directed verdict is not reported.

The opinion of the Court of Appeals (R-293) is reported at 191 F. 2d 252.

Jurisdiction.

The judgment of the Court of Appeals was entered on August 1, 1951 (R-293). The order of the Court of Appeals denying petitioner's timely Petition for Rehearing (R-301) was entered on September 18, 1951 (R-315).

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

Statute Involved.

This case involves two sections of the Labor-Management Relations Act of 1947, commonly referred to as the Taft-Hartley Act, 61 Stat. 136, 29 U. S. C. (Supp. III) §§ 151, et seq:

(1) Section 301, 29 U. S. C. § 185, granting the district courts jurisdiction of suits for breach of collective bargaining contracts. The text of this section appears *infra* at pages 23-24, Appendix.

(2) The "cooling off" provisions of Section 8, 29 U. S. C. § 158, requiring sixty days' notice and delay before termination of a collective bargaining agreement. The text of this section appears *infra* at pages 24-25, Appendix.

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1. As required by the rules of the Court of Appeals for the Third Circuit, the record was printed as an Appendix to petitioner's brief in that court and the pages numbered "1a, 2a", etc. In this Petition, record references are cited simply as R-1, R-2, etc., omitting the "a", but the references are to the indicated numbered pages in the Appendix-record.

Questions Presented.

This employer's suit under Section 301 of the Taft-Hartley Act was based on a collective bargaining agreement (R-6) which included a "no-strike" clause (R-9), an arbitration clause (R-14), and the following provision (R-16):

> "This agreement shall be in effect from August 15, 1947 to August 15, 1948 and thereafter from year to year, provided, however, that either party may terminate the same on not less than sixty (60) days written notice given to the other prior to the anniversary date.
>
> "However, should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed."

The union gave sixty days' notice of termination [2] on June 1, 1948. Negotiations began on June 15, 1948. The terms of the new contract had not been agreed upon by August 15, 1948. Five days later, despite the above quoted provision of the contract, the union broke off negotiations and went on strike. The employer filed this suit for damages for breach of contract on October 26, 1948. The lower courts dismissed it (R-163, R-293) without discussing any provision of the Taft-Hartley Act.

The questions presented are:

1. Whether, in a breach-of-contract action under Section 301 of the Taft-Hartley Act, between parties admittedly subject to the federal regulatory scheme of that statute, the lower federal courts can dismiss the suit solely on the basis

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2. In both courts below, petitioner urged that the union's letter of June 1, 1948 was not effective as notice of termination. Although it still believes those courts' adverse rulings on this point are also erroneous, petitioner does not bring that question to this Court.

of un-cited state decisional law allegedly permitting termination-at-will of a collective bargaining agreement of indefinite duration, rather than applying the contrary provisions of the federal statute and the contract itself.

2. Whether the lower federal courts can, in the same manner, absolve the union from liability under the Taft-Hartley Act for breach of contract when it goes on strike relying on its own unilateral interpretation of the above quoted provision of the contract, in violation of another provision requiring that "differences arising . . . in the interpretation of this agreement" shall be submitted to arbitration.

Statement of the Case.

This action was instituted by petitioner under Section 301 of the Taft-Hartley Act (29 U. S. C. § 185) to recover damages caused by respondents' breach of a labor relations contract (R-6) which had been negotiated by collective bargaining.

The facts which resulted in this suit for damages may be summarized as follows:

Petitioner operates a paper mill at Bristol, Pennsylvania, and is engaged in interstate commerce (R-29). Respondents are unincorporated labor organizations and are the collective bargaining representative of petitioner's employees (R-29).

On August 13, 1947, petitioner and respondents entered into an agreement governing wages and working conditions for the period beginning August 15, 1947 (R-6).

The agreement included a "no-strike" clause (R-9), which appears *infra* at page 25, Appendix, and an arbitration clause (R-14), which appears *infra* at pages 26-27, Appendix.

The term covered by the agreement was stated in Section 15 thereof (R-16), providing as follows:

"This agreement shall be in effect from August 15, 1947 to August 15, 1948 and thereafter from year to year, provided, however, that either party may terminate the same on not less than sixty (60) days written notice given to the other prior to the anniversary date.

"However, should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed."

By letter dated June 1, 1948 (R-17), the Regional Director of the union requested the company to designate a date and place for a meeting "for the purpose of discussing changes in the contract for the coming year". By letter dated June 7, 1948 (R-18), the company suggested June 15, 1948 as the date for the requested meeting.

Negotiations were carried on during the course of several meetings (R-220, R-227, R-235, R-212, R-248, R-254, R-171) held between June 15, 1948 and August 20, 1948, the date of the strike (R-32).

At the meeting on August 16, 1948, the following exchange took place (R-250) between the union's International Representative and counsel for the company:

"We gave you a list of proposals; we did not say this was the ultimatum; we were willing to bargain, explained Mr. Carrella. You did not even give us a retroactive agreement. The people brought up that question—if the Company is willing to negotiate, why do they not give us a retroactive agreement? This is the first time this has been mentioned, responded Mr. Beechwood. I believe if it goes beyond the expiration date we should have an agreement on retroactivity, stated Mr. Carrella. Mr. Beechwood quoted from the Contract, 'This agreement shall be in effect from August 15, 1947, to August 15, 1948, and thereafter from year to year,' with special emphasis on, 'However,

should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed.' You drafted this and insisted on its being put into the Contract, and it's your Contract, said Mr. Beechwood. When we gave you the sixty-day notice, that means we are terminating the Contract, said Mr. Carrella."

At the meeting on August 17, 1948, the company negotiators offered to increase wages five cents per hour and to pay time-and-one-half for Saturday and double time for Sunday (R-257). The union negotiators agreed to report that offer to the membership and to ascertain their attitude with respect to it (R-258).

At the meeting on August 20, 1948, the International Representative advised the company that the membership had rejected the company's offer. He then stated, "that means if we cannot get together and settle today, the plant will be shut down Monday" (R-172).

No agreement was reached. The employees went on strike that same day, and the mill was not in production from August 20, 1948 to November 20, 1948 (R-32). The International Union's official publication described it as a "perfectly paralyzed plant" (R-179).

Finally (R-166), the union accepted the company's continuing offer of a five cents per hour wage increase and payment of time-and-one-half for Saturday and double time for Sunday, rejection of which same offer had caused the strike three months earlier (R-172).

The company's original Complaint was filed in the District Court on October 26, 1948, and its Amended Complaint was filed on December 20, 1948 (R-1). The union's Amended Motion to Dismiss was filed December 24, 1948 (R-1) and was denied with opinion (R-24) on March 11, 1949.

The case came on for trial on November 6, 1950 (R-2). After conclusion of testimony directed solely to the issue of liability (R-157), the trial judge granted the union's Motion

to Dismiss (R-158). Judgment was entered accordingly (R-289).

The trial judge filed no written opinion. He explained his ruling orally (R-164-165). The now relevant portions of the judge's statement are as follows:

1. With respect to the first of the "Questions Presented" to this Court, *supra* page 3, the trial judge said (R-165):

> "The third question, it seems to me, which is presented, is what interpretation is to be given to the second paragraph of section 15 making reference to that section which provides: 'However should there be delay in negotiating a new agreement this agreement shall remain in full force and effect until such time as the new agreement is completed.' This Court rules with respect to the construction and interpretation of that section that the provision means that not all of the contract, not in its complete fullness, is it in effect: it means that the provisions of the agreement are to remain in full force and effect after termination until the parties refuse either to negotiate in good faith, or meet in a deadlock or an impasse. As I say, only those sections of the contract are in force which would permit, it seems to me, under a reasonable interpretation, the factory to operate and to function as it did in the past."

2. With respect to the second of the "Questions Presented" to this Court, *supra* page 4, the trial judge said (R-165):

> "Those are the sections—and I also rule, number 5, I guess it is—that the reference in the agreement, in the contract, to the interpretation of the agreement as being part and parcel of a duty on both parties to construe the phrase 'any difficulty arising in interpretation of the agreement' does not within its orbit cover the question which eventually came to this Court, and whether or not there was apparent controversy between

the parties as to the date did not mean that it was subject to review under the grievance provision with respect to arbitration."

The Court of Appeals for the Third Circuit (Judges Hastie, Biggs and Staley) affirmed the judgment (R-297). That court's opinion (R-293) is reported at 191 F. 2d 252. It describes this collective bargaining agreement in the following terms (R-293):

> "The contract was a comprehensive and detailed agreement covering the field of employment and labor relations at plaintiff's plant. It contained an express covenant not to strike. It was executed and to be performed in Pennsylvania and we construe it in accordance with Pennsylvania law."[3]

With respect to the first of the "Questions Presented" to this Court, the Court of Appeals said (R-295-296):

> "It is also necessary to consider the meaning and effect of the language of the second paragraph of Section 15 of the contract that 'should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed'. The language follows immediately after the provision for 60 days notice of termination on a contract anniversary. It is obviously directed at the avoidance of a no contract situation where pending negotiation of a new contract continues beyond the notified termination of the old. It is phrased only in terms of a successful negotiation. It leaves to inference the result of unsuccessful negotiation.
>
> "But the correct inference is not hard to draw. Negotiation is set up as a factor suspending or postponing the normal effect of notice of termination. The

3. Petitioner still believes the lower courts' purported interpretations of Pennsylvania law are erroneous, but does not bring any question of state law to this Court.

end of negotiation, whether success or failure, marks the end of this postponement.

"It may not always be easy to say when negotiations for a new contract have failed and ended. But no such difficulty exists here. Before the strike was called both parties had recognized that further discussions would be futile. They had broken off their long continued meetings with the understanding that they would not meet again. In recognition of the impasse and its likely consequences, they had discussed and arranged for maintenance essential to plant security in the event of a strike. It is a fact clear on this record that negotiations toward a new contract had failed and come to an end.

"In summary, the contract here required 60 days notice of termination, and appropriate notice was given. But, also in accordance with the contract, termination was suspended by negotiations toward a new contract. These failed and ended. The old contract thereupon terminated pursuant to the permitted election already made manifest by timely notice as provided in the document itself. The obligation not to strike, like the other obligations of the contract ceased to exist.[2] For this reason the complaint was properly dismissed. Other points urged need not be considered."

In a footnote, the Court of Appeals added:

"2. We have examined the several authorities cited and argued by plaintiff concerning obligations not to strike. They do not help us decide what Section 15 of this contract means. And that is the decisive inquiry here."

The Court of Appeals' opinion made no mention of any section of the Taft-Hartley Act.[4] In its Petition for Re-

4. Except of course the mere statement that the action had been brought under Section 301.

hearing (R-301) the company asked the Court of Appeals to at least consider and discuss the applicable provisions of that statute, to consider conflicting decisions of this Court and of other Courts of Appeals, to reconsider its interpretation of the contract itself, and to at least cite the Pennsylvania decisions on which it purported to rely. The Petition for Rehearing was denied without oral argument thereon and without opinion (R-315).

Specification of Errors to Be Urged.

The Court of Appeals for the Third Circuit erred:

1. In holding that the labor relations contract, admittedly in effect on August 20, 1948, could be terminated by the union at will, despite contrary provisions of the federal statute and the contract itself.

2. In failing to hold that the dispute as to the interpretation and effect of Section 15 of the contract was subject to arbitration.

3. In holding that the union did not breach the "no-strike" and arbitration provisions of the contract by going on strike.

4. In ignoring the applicable federal statute and applicable decisions of this Court and of other Courts of Appeals.

5. In affirming the judgment of the District Court.

Reasons for Granting the Writ.

1. Without even discussing the Taft-Hartley Act, the Court of Appeals has decided questions of nation-wide application and of the highest practical importance to large numbers of employers, employees, and labor unions engaged in basic industries in interstate commerce. In so doing, the lower court re-wrote the contract itself and purported to rely on un-cited state decisional law, ignoring applicable sections of the federal statute and this Court's de-

cision in *International Union v. O'Brien*, 339 U. S. 454. The lower court has thus effectively nullified federal statutory provisions designed to promote stability in labor relations and to prevent interruptions in the flow of interstate commerce. The important questions of federal labor relations law raised by the case justify review and decision by this Court.

2. Although it failed to mention Section 8(d) of the Taft-Hartley Act, the Court of Appeals' decision has the effect of holding that section inapplicable to collective bargaining agreements of indefinite duration. This conflicts with the terms of the statute itself, as well as with the decision of the Court of Appeals for the District of Columbia Circuit (Judges Sweeney, Clark and Miller) in similar circumstances in *Boeing Airplane Co. v. National Labor Relations Board*, 174 F. 2d 988, 990-991, which court's interpretation was also concurred in by the Court of Appeals for the Ninth Circuit (Judges Healy, Bone and Hastie) in *Boeing Airplane Co. v. Aeronautical Industrial District Lodge No. 751*, 188 F. 2d 356, 357.

3. By refusing to recognize that this strike violated the arbitration and "no-strike" clauses and thereby gave the employer a cause of action under Section 301 of the Taft-Hartley Act, the Court of Appeals for the Third Circuit reached a conclusion conflicting with that reached by the Court of Appeals for the Second Circuit (Judges Clark, L. Hand and Chase) in an analogous situation in *Shirley-Herman Co. v. International Hod Carriers*, 182 F. 2d 806, and by the Court of Appeals for the Fourth Circuit (Judges Parker, Soper and Dobie) in *International Union v. Colonial Hardwood Flooring Co.*, 168 F. 2d 33, 35.

4. Both the District Court and the Court of Appeals refused to even consider the important federal statutory issues implicit in this case. They thereby nullified federal statutory rights without discussion or citation of a single section of the federal statute or a single federal court de-

cision. The result is in conflict with applicable decisions of this Court and of other Court of Appeals. The rule adopted would permit arbitrary, unilateral strike or lockout action, despite federal statutory provisions enacted to protect interstate commerce from such disorders and despite explicit contract provisions adopted to further that same objective.

Such deviations from sound judicial standards call for the exercise of this Court's supervisory powers, so that the important federal issues involved may be correctly and authoritatively decided for the guidance of all employers, employees, and labor unions engaged in interstate commerce.

The foregoing Reasons are discussed *seriatim* below.

1. Sections 301 and 8(d) are key provisions of the Taft-Hartley Act deliberately enacted by the Congress after the fullest consideration. They are designed to promote stability in labor relations and thus prevent interruptions in the flow of interstate commerce. That objective has been recognized since the very beginning as the constitutional foundation for the whole federal regulatory scheme. *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U. S. 1.

"It is elementary that what Congress constitutionally has given, the state may not constitutionally take away. *Hill v. Florida*, 325 U. S. 538." *International Union U. A. W. v. Wisconsin Employment Relations Board*, 336 U. S. 245, 254. By these two sections of the Taft-Hartley Act, the Congress has given employers and employees in interstate commerce the right to notice and delay before termination of collective bargaining contracts of indefinite duration (Section 8(d)), fortified by a cause of action for damages for breach of such contracts (Section 301).

It is perfectly clear from a mere reading of the opinion of the Court of Appeals in this case that that Court did not give either section any consideration. Indeed the court

frankly stated that it was applying only state law, which is a concession that it did not apply the federal law.

This Court has already held one state statute unconstitutional because in conflict with Section 8(d) of the federal law, although the invalidated state provisions would have provided *greater* protection against interruption of interstate commerce than does Section 8(d). *International Union v. O'Brien*, 339 U. S. 454. The alleged but uncited state decisional law applied by the Court of Appeals in this case *nullifies* the safeguards of the federal statute. A state statute, regulation or order to that effect could not prevail in the face of the *O'Brien* case and others [5] which it followed. It would be highly ironical if the federal scheme could nevertheless be displaced by the contrary decisional law of the state. Indeed, this Court has specifically held that employees' federal rights cannot be confined by the various states' notions as to the wisdom of federal policy, "whether those [state] limits be defined by statute or by the judicial organ of the state". *American Federation of Labor v. Swing*, 312 U. S. 321, 326.

In every instance up to this time in which there has been a substantial claim of conflict between state and federal law in this field, this Court has reviewed the case to

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5. *Hill v. Florida*, 325 U. S. 538; *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 667; *LaCrosse Tel. Corp. v. Wisconsin Employment Relations Board*, 336 U. S. 18; *Plankinton Packing Co. v. Wisconsin Employment Relations Board*, 338 U. S. 953. See also *National Labor Relations Board v. Kalamazoo Stationery Company*, 160 F. 2d 465, certiorari denied 332 U. S. 762.

Even those cases which have upheld particular state statutes or orders have reaffirmed the rule that if there is a conflict the federal law's supremacy must be maintained. *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740; *International Union U. A. W. v. Wisconsin Employment Relations Board*, 336 U. S. 245; *Algoma Plywood and Veneer Co. v. Wisconsin Employment Relations Board*, 336 U. S. 301.

make certain that the supremacy of the federal law would be maintained. It should do so here.[6]

In this connection, this Court recently pointed out that in writing this very statute, "Congress demonstrated that it knew how to cede jurisdiction to the states." *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U. S. 383, 397, and notes 23-25. Similarly, in another area where federal and state laws have conflicted, the Court only yesterday emphasized that if such issues are left to the "confused and conflicting medley" of state procedures, federal rights "would be contingent upon application of myriad discordant rules by a thousand judges scattered over the land". *Bindczyck v. Finucane*, — U. S. —, 20 Law Week 4019.

The same kind of situation will prevail in this important field of law if federal courts throughout the country can treat these federal statutory rights according to their own notions of the decisional law of the various states. In this field of the economy, such a situation would be intolerable. There can be no doubt that in the prevention of disastrous strikes and lock-outs in interstate commerce there must be a uniform federal rule. And the Congress has enacted that rule in Sections 301 and 8(d), which the Court of Appeals admittedly ignored in favor of state decisional law.

The parties here recognized and sought to further the federal policy of uninterrupted production. Section 15 of the contract (R-16) was designed to insure stability during the most precarious period—the period when a new contract was to be negotiated.[7] It provides in plain lan-

6. The fact that the judgment here challenged is not from a state court but from a federal appellate court makes review even more imperative. State courts pass on such issues infrequently, but the federal district courts and Courts of Appeals are constantly interpreting and applying this statute.

7. It has been well said that "The degree of stability in labor relations gained through a collective bargaining

guage [8] that "should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed." This provision was inserted in the contract at the request of the union (R-250). It reflects the union's desire to hold on to the benefits of their contract while attempting to push them still further. It also reflects the employer's natural desire to avoid a breakdown in production. The public's interest in those objectives is similarly reflected in Sections 8(d) and 301 of the statute.

Nevertheless the lower courts, with a shocking disregard of all these factors, have held in effect that either party may break off negotiations whenever satisfied that further discussions would be futile. This is not only a perversion of this plain contract provision, *cf. Colgate-Palmolive Peet Co. v. National Labor Relations Board*, 338

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contract depends to a great extent on the provisions made for the duration, termination, and amendment of the contract." COLLECTIVE BARGAINING NEGOTIATIONS AND CONTRACTS (Bureau of National Affairs) 36:1.

Further, "A certain *minimum level* of stability in terms of contract termination or modification is imposed on collective agreements by the provisions of the Taft Act." *Ibid.* (Emphasis added.)

8. This clause, as written by the parties, is fairly typical of the approach to this problem reflected in current collective bargaining agreements. Such contracts "often provide for their temporary extension, if negotiations for a new agreement are prolonged after the expiration date of the old agreement". 5 C. C. H. Labor Law Reporter § 51,827. Moreover, "Contracts may be extended temporarily for (1) a reasonable length of time, or (2) a specified period, or (3) until a new agreement is negotiated." *Ibid.*

It is thus made clear that parties to these agreements negotiate the exact type of extension clause which they desire. That is precisely what the parties did in this case. It is crystal clear from the lower courts' own words that they did violence to this crucial provision.

U. S. 355, 363, but also a complete negation and nullification of the statute.

The wide importance of the lower courts' decision in this respect is emphasized by the fact that contracts in essential industries uniformly contain some such provision governing the critical period of negotiation. See, for example, General Motors contract, 5 C. C. H. Labor Law Reporter § 53,101.75; Carnegie Illinois Steel Corp. contract, *Id.*, § 53,110.80; Brooklyn Union Gas Co contract, *Id.*, § 53,120.39; Goodrich Rubber Co. contract, *Id.*, § 53,140.110; Consolidated Edison Co. contract, *Id.*, § 53,150.46; Lever Brothers Co. contract, *Id.*, § 53,170.149; Johnson & Johnson Corp. contract, *Id.*, § 53,180.62. Other examples of similar clauses are cited in the margin.[9]

The universal use of such clauses illustrates the nation-wide importance of a proper application of these provisions and of Sections 8(d) and 301 in order to prevent interruptions to interstate commerce by strikes or lockouts during critical negotiation periods.

The contract in this case was "made in accordance with the letter and the spirit of the statute". *Colgate-Palmolive-Peet Co. v. National Labor Relations Board*, 338 U. S. 355, 363. Indeed, under Section 15, both parties undertook heavier obligations than the statute requires. The Court of Appeals cannot be permitted to "reform it to con-

9. See also American Tobacco Co. contract, UNION CONTRACTS AND COLLECTIVE BARGAINING PRACTICE (Prentice-Hall) § 56,043.35; American Crystal Sugar Co. contract, Id., § 56,051.44-46; George A. Hormel & Co. contract, Id., § 56,071.46; National Bituminous Coal Wage Agreement, Id., § 56,161.44; Dewey & Almy Chemical Co. contract, Id., § 56,212.44; Sinclair Refining Co. contract, Id., § 56,228.4; Kaiser-Frazer contract, Id., § 56,754.93; International Harvester Co. contract, Id., § 56,908.8; Libby-Owens-Ford Glass Co. contract, Id., § 56,945.67; Radio Corporation of America contract, Id., § 56,965.71. And see other contracts in COLLECTIVE BARGAINING NEGOTIATIONS AND CONTRACTS (Bureau of National Affairs) 23:1-24:706.

form to the [court's] idea of policy", *ibid*, or state law, and thereby defeat the purpose of both the federal statute and the contract.

The lower courts have failed to recognize the importance of this issue and have ignored the high national policy deliberately enacted to govern it. If the decision in this case is permitted to stand, the safeguards written into the law by Sections 301 and 8(d) will be nullified and the public interest which underlies the entire federal statutory scheme will be jeopardized. Moreover, the decision below is patently inconsistent with the many decisions of this Court from *Hill v. Florida*, 325 U. S. 538 to *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U. S. 383.

This Court should remedy this situation by reviewing and reversing the judgment below.[10]

2. The Court of Appeals, by ignoring Section 8(d), actually held it inapplicable to the contract admittedly in effect between the parties on August 20, 1948, the date of the strike, and refused to enforce the employer's cause of action under Section 301.

The lower court held that when "negotiations toward a new contract . . . failed and ended . . . the old contract *thereupon* terminated" (emphasis added). 191 F. 2d 252 at 254. Obviously, the court thus held that *some* contract was in effect at the very moment the union went on strike. Nevertheless, it also held the strike did not breach that contract. In addition to being erroneous for reasons already discussed, this result conflicts with that reached on a similar set of facts by the Court of Appeals for the District of Columbia Circuit, which was later adopted by the Court of Appeals for the Ninth Circuit.

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10. This Court has always zealously guarded the federal rights of both employers and employees under the federal scheme of the Employers Liability Act, 45 U. S. C. §§ 51 et seq. The equally important regulatory plan governing collective bargaining and labor relations should be similarly treated.

Boeing Airplane Co. v. N. L. R. B., 174 F. 2d 988, involved a contract which by its terms was to be in effect until March 16, 1947 "and thereafter until a new agreement has been reached by the parties either through negotiation or arbitration". Changes were proposed by the company at various times beginning in October of 1946. Several series of negotiations had not produced a new agreement by April 22, 1948, more than a year after the originally specified termination date. The union went on strike on April 22, 1948, and the Court of Appeals held that the strike violated both the "no-strike" clause of the contract and Section 8(d) of the Act. It held that the above quoted provision extending the contract had kept it in effect for more than a year and that the strike breached the contract rather than terminating it, as held by the Court of Appeals in this case.

What the Court of Appeals for the District of Columbia said in the *Boeing* case is strikingly appropriate here:

> "We agree with the principle of law that a contract of indeterminate duration may become terminable by unilateral action on the part of either party after a reasonable lapse of time. In enacting Section 8(d) Congress specified what the reasonable notice of termination would be, namely, sixty days. In this case the Company was allowed no more than twenty-four hours to consider a proposal containing demands which were far-reaching in their effect upon the Company. The Company did not accept the proposal and the strike occurred. This is not in compliance with the no-strike clause of the contract and, even assuming the existence of an interim contract, it was not sufficient notice under either the 1946 contract or the so-called interim contract.
>
> "We are of the view that the Union violated both Section 8(d) of the National Labor Relations Act, as amended, and the no-strike clause of its own contract. . . ." 174 F. 2d at 991.

It is of course not necessary to hold that in the circumstances of this case the statute required notice and delay for any *particular* additional period. The important point is that where a contract of indefinite duration is in effect the statute *applies* and requires *at least* reasonable notice and delay before strike or lockout action is taken.

The Court of Appeals for the Ninth Circuit also adopted this view in a subsequent suit by the Boeing Company under Section 301. *Boeing Airplane Company v. Aeronautical Industrial Lodge No. 751,* 188 F. 2d 356 at 357. That Court agreed with the District Judge that "the union had been guilty of a material breach" of the contract.[11] Both Courts of Appeals therefore reached a result which conflicts with the decision of the Court of Appeals for the Third Circuit in this case.

It is also significant that the "futility" approach adopted by the Court of Appeals in this case was expressly rejected by the Court of Appeals for the District of Columbia Circuit in the *Boeing* case. The National Labor Relations Board had stated, 80 N. L. R. B. 447, 450, that Section 8(d) did not apply to interim contracts and that "no useful purpose would be served" by requiring the union to comply with the notice and delay provisions of that section. This view of Section 8(d) was summarily rejected by the Court of Appeals for the District of Columbia Circuit, 174 F. 2d 988, 990-991, and by the Court of Appeals for the Ninth Circuit, 188 F. 2d 356, 357.

On facts which are indistinguishable, the Court of Appeals in this case has revived this twice-rejected theory of non-application of Section 8(d) and the irresponsible view that either party can break off negotiations with impunity whenever satisfied that further discussions would be "futile". They have added the wholly novel theory that as the

11. Recovery was denied only because the courts held the employer had rescinded the contract on the day following the union's breach and had thereby lost its right to claim damages.

union opens the door to abandon the conference room in favor of the picket line it automatically terminates the contract and thus avoids liability for its breach. This flies in the face of the statute and the cited contrary decisions.

The contract in this case deliberately provided that where a new agreement had not been reached by the originally specified termination date, the original sixty day termination notice would *not* be given effect but instead the contract continued in force until a new agreement had been completed. Since the contract did continue in force, its "no-strike" clause and arbitration clause continued to bind the parties, and this strike was a breach of the contract as well as Section 8(d), which in terms applies to contracts of indefinite duration. Under the *Boeing* decisions, this Union's breach was actionable under Section 301 and the lower court's decision to the contrary is erroneous.

The conflict on this point requires action by this Court.

3. Section 13 of this contract (R-14) requires *inter alia* that all differences arising "in the interpretation of this agreement" shall be submitted to arbitration. The Court of Appeals did not mention this clause in its opinion. But holding, as it did, that the union was free to strike at will, the court must have considered this arbitration clause inapplicable to the dispute as to whether Section 15 (R-16) had continued the contract in force. The union took the position that Section 15 had no such effect. The company negotiators expressed the opposite view (R-250). If this was not a "dispute in the interpretation of this agreement", it is difficult to imagine one. Nevertheless, the Court of Appeals found no breach of contract in the union's strike without invoking arbitration.[12]

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12. Obviously the preliminary procedures specified in Section 13 (R-14) for the processing of "in-plant" grievances were not intended to and would not apply to this type of dispute. The very highest levels of both union and company officials were *already* involved. All that remained to be done was the appointment of the arbitrators as re-

This result conflicts with that reached by two other Courts of Appeals which have decided similar questions in suits under Section 301.

In *Shirley-Herman Co. v. International Hod Carriers*, 182 F. 2d 806, the Court of Appeals for the Second Circuit held a strike in violation of an arbitration clause actionable under Section 301. There, as here, the union had "promised that regardless of the nature of a dispute which might arise, it would not cease work but would keep on the job until the dispute was settled by the machinery provided for in the contract". 182 F. 2d at 810. The decision of the court below in this case cannot be squared with that of the court in the *Shirley-Herman* case.

Similarly, in *International Union v. Colonial Hardwood Flooring Co.*, 168 F. 2d 33, 35, the Court of Appeals for the Fourth Circuit held that an arbitration clause to the same effect as that involved in this case covered the controversies made subject to the grievance procedure. That Court refused to stay a suit against a union under Section 301 based on a strike in violation of the arbitration clause. If the Court of Appeals for the Third Circuit had shared the Fourth Circuit's view, it could not have approved the dismissal of this suit.

The conflict on this point also requires action by this Court.

4. The opinion of the Court of Appeals in this case is a remarkable document. This suit involved rights and responsibilities under a much-litigated federal statute. The applicable sections of that statute were briefed and argued before it. Federal decisions in other cases were discussed. Nevertheless, the lower court dismissed the action without referring to or interpreting either section of the statute and without citing a single decision of this Court or any other federal court.

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quired by the last two paragraphs of Section 13. The ease with which this solution could have been put into effect emphasizes the arbitrary nature of the union's strike action.

Moreover, despite Sections 301 and 8(d) of the statute, and despite a contract containing a "no-strike" clause (R-9), an arbitration clause (R-14), and a provision that the contract continued in effect until a new agreement was completed (R-16), the Court found no breach of contract in a strike which turned the employer's mill into a "perfectly paralyzed plant" (R-179) for three months.

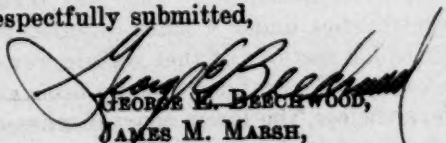
Its decision is based on the novel theory that the strike broke the contract but did not breach it. The court held that so long as the union continued to accept the benefits of the contract while trying to push them still further, the contract was alive, but as soon as the union gave up trying to improve it, the contract was dead.

This is a most unusual decision in a field of law vitally important to the economic well-being of the country. It therefore creates an occasion appropriate for the exercise of this Court's power and duty to supervise the lower federal courts. The function of those courts is not performed by approving lawless conduct by any segment of society. This Court should reaffirm the rule of law in this constantly recurring type of controversy.

Conclusion.

For all the foregoing reasons, Petitioner prays that a writ of certiorari issue to the end that the judgment of the Court of Appeals for the Third Circuit in this cause may be reviewed and reversed.

Respectfully submitted,



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APPENDIX.

Text of Statute Involved.

Section 301 of the Taft-Hartley Act, 61 Stat. 136, 29 U. S. C. (Supp. III) § 185, provides as follows:

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

"(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

"(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

Section 8 of the statute, 129 U. S. C. § 158, provides in pertinent part as follows:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

* * *

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of Section 159(a) of this title;

* * *

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: Provided, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall

also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later;

* * *"

Provisions of the Contract.

"SECTION 4. INTERRUPTION OF WORK.

"There shall be no strikes, walkouts, lockouts, slowdowns or work stoppage as a result of any grievance or dispute until all other means and every effort have been exhausted to adjust them through the regu-

lar procedure set up by this agreement and in no case without the approval of the International Officers of the Union." (R-9)

"SECTION 13. GRIEVANCES—PROCEDURE—ARBITRATION.

"All grievances, complaints or any other differences arising in the mill or in the interpretation of this agreement, between the members of the Union and the Company, shall be submitted for adjustment in the following manner:

When a grievance or complaint arises in a department of the mill, the member or members affected shall, together with the Department Steward, take the matter up with the Department Superintendent. The grievance shall be submitted in writing within fifteen (15) days after the occurrence thereof.

Any adjustment of any and all grievances, whether old or new shall not, under any circumstances, antedate fifteen (15) days prior to the date on which the grievance is delivered to the Department Superintendent.

If in this way, the complaint or grievance has not been satisfactorily adjusted, it shall then be submitted to the entire adjustment Committee, comprised of five (5) members, who will take it up with the Personnel Manager.

If a satisfactory adjustment is not reached by this procedure, the Adjustment Committee and an Official of the International Union shall negotiate for a settlement of the matter with the general Manager or his representative and Personnel Manager.

"Upon failure of these negotiations to bring about a satisfactory settlement, the grievance shall then be referred to a Board of Arbitration consisting of three

(3) members. One member shall be selected by the Company, one by the Union, and the third shall be selected by the first two from a panel of Arbitrators submitted by the American Arbitration Association. Decisions by the Board of Arbitration shall be final and binding upon both parties. Expenses of Arbitration to be borne equally by the Company and the Union.

"The Company agrees to pay members of any committee at their regular rate of pay while meeting with the Company on adjustments or negotiations, such pay not to exceed an average of four (4) hours per week." (R-14, R-15)

"SECTION 15. TERMS OF AGREEMENT.

"This agreement shall be in effect from August 15, 1947 to August 15, 1948 and thereafter from year to year, provided, however, that either party may terminate the same on not less than sixty (60) days written notice given to the other prior to the anniversary date.

"However, should there be a delay in negotiating the new agreement, this agreement shall remain in full effect until such time as a new agreement is completed." (R-16)